

Newfields Planning Board Meeting Minutes

June 18, 2015

Members present: Jeff Feenstra, John Hayden, Bill Meserve, and Jamie Thompson, Selectmen's Representative.

Alternates present: Keith Rowe and Scott Wachsmuth

Members absent: Mike Price, Mike Todd and Dave Edgerly

Staff present: Clay Mitchell, Town Planner and Wendy Chase, Recording Secretary

Mr. Feenstra convened the meeting at 7:00pm and introduced those present as listed above.

I. Unfinished Business

Vernon Family Farm – Site Plan Review – Map 211, Lot 14, 301 Piscassic Road

The Vernon Site Plan was continued from the May 21, 2015 meeting so that proper notification could be sent to the abutters.

Mr. Wachsmuth recused himself from the Board.

In attendance for this application:

Jeremiah Vernon, Owner/Applicant

Amy Manzelli, BCM Environmental & Land Law, PLLC, Counsel to the Owner/Applicant

Ms. Manzelli spoke on behalf of her Client Mr. Vernon. She said that the Vernon Site Plan is to ensure traffic and parking from the farm roadside stand doesn't adversely impact adjacent property, streets and sidewalks, or public safety.

- The Vernon's propose to use an existing farm building as a farm roadside stand including products displayed outside on the interior, not roadside, side of the building.
- The store hours of operation will be 8am to 6pm daily.
- The parking will be on the proposed gravel parking lot in front of the building that will include a drainage pipe that will drain surface water runoff.
- The size of the proposed gravel parking lot is 4,750 square-feet.
- The front door of the building is 39-feet from the road.
- Estimate for customer traffic is five (5) cars per day.

Ms. Manzelli referred to the following State Statutes pertaining to this type of agriculture:

RSA 672:1.III-b, "Agriculture makes vital and significant contributions to the food supply, the economy, the environment and the aesthetic features of the state of New Hampshire, factor in providing for the favorable quality of life in the state."

RSA 425:2-a, "It is the policy of the state of New Hampshire through the department of agriculture, markets and food, and in conjunction with other state agencies to encourage and support local food producers, farming and fisheries, including businesses engaged in agriculture and the associated local and regional businesses that process, purchase, distribute and sell such food throughout the state." She

also quoted, "Economic development opportunities among New Hampshire's cities and towns are facilitated by state and local governments cooperating to remove obstacles and excessive financial burdens to farms and associated businesses."

She referred to paragraph III, "to the extent possible, local governments shall consider the policy and principles of this section when adopting local law, or when enforcing existing law and regulations."

Ms. Manzelli referred to RSA 214-a Farm, Agriculture, Farming – and commented on a couple of sections: "shall remain an agricultural operation and not be considered commercial, provided that at least 35% of the product sales in the dollar volume is attributable to products produced on the farm or farms of the stand owner." She said that the Vernon farm will meet this regulation.

Ms. Manzelli referred to RSA 674:32-b.III – "any new establishment, or expansion of a farm stand, retail operation or other use involving on-site transactions with the public may be made subject to applicable special exception, building permit, or other local land use board approval and may be regulated to prevent traffic and parking from adversely impacting adjacent property, streets and sidewalks, or public safety."

She said this state law limits municipalities to regulate pieces of the land when it comes to a farm stand and that is why this site plan review procedure is more streamlined than a typical site plan review procedure.

Ms. Manzelli said that the Vernon's received a driveway permit with the condition that the current driveway will be removed and the new driveway will be used for both access to the farm stand and residential purposes. Trees will be removed; the driveway will not exceed 28-feet in width and parking for the roadside stand will not be allowed on the driveway.

Ms. Manzelli said that there are no provisions in the ordinance pertaining to parking requirements for a roadside stand, but there are parking requirements for commercial use and, even though this proposal is not commercial, the parking area far exceeds the parking space requirements and that would clearly satisfy safety concerns for the parking area.

Ms. Manzelli said that the Board received a letter from the Wachsmuth's Attorney Justin Richardson at the meeting and she received a copy an hour ago and did not get a chance to thoroughly review it. She said that the Town made an Administrative Decision on April 14, 2015 stating that the building is a farm roadside stand, which is a permitted use in the Agriculture Residential zoning district.

Ms. Manzelli agreed with Attorney Richardson that the site plan application does not address all the criteria under a normal site plan review application and said because it is a site plan for a farm roadside stand the board can waive those requirements, she referred to RSA 674:44.III.(b) and RSA 674:32-c.II.

Mr. Meserve opined that the removal of the existing driveways and the construction of the new driveway will be an improvement; it is currently a strained situation. He also commented that the letter received by the Wachsmuth's attorney is a distraction in a way because the board had just received it and no time to react to it.

Mr. Feenstra commented for the record that the Board did ask Mr. Vernon to produce a limited site plan review application because it is a farm stand. Mr. Meserve added that the applicant received a thorough review by the Conservation Commission because of the easement on the land and the Commission approved it.

Ms. Manzelli clarified that the Conservation Commission approved the construction on the site; not the farm stand/store.

Mr. Hayden commented that the Conservation Commission has no authority to approve a site plan review application.

Mr. Thompson asked what kind of assurances that health and safety codes will be in compliance. Ms. Manzelli said that as part of the Administrative Decision on April 14th they are required to obtain a building permit which will require inspections by the Building Inspector.

Mr. Thompson asked how or who monitors the sales of product to ensure the 35% of product amount regulation is complied with. Ms. Manzelli said that is hard to monitor and said they pledge that they will adhere to that provision.

Mr. Meserve said that the Department of Agriculture has not yet received a request of proof that the 35% requirement is met, but if they received a request they would address it, and that would be the Agency to enforce that.

Ms. Manzelli said that they will comply with the town's sign ordinance.

Ms. Manzelli requested that if the board approved the site plan with conditions that the conditions are made approvable administratively by the Building Inspector so they don't have to come back to the Planning Board.

Mr. Richardson said that he looked at the Vernon Farm Facebook page and saw a lot of "posts" encouraging people to come in to support Mr. Vernon's proposal. He submitted copies of the Facebook page to the members. He wanted to make sure the Board would not be influenced by inappropriate comments outside the meeting. He referred to RSA 500-A: 12 - Juror Standard.

Each member of the Board did not feel they would be influenced either way and did not feel the need to recuse themselves.

Mr. Richardson referred to RSA 676:4.12 – Sufficiency of application. He said the board has the right to determine whether or not the application submitted by the applicant is complete. He commented that the applicant failed to provide required information for the Site Plan Application. He said the plan submitted does not meet the town's regulations. He said the Board has to determine that the application is complete before opening a public hearing.

Mr. Mitchell said the board can look at it two ways. The board can determine that it is a limited site plan and accept the application as presented, or it can determine that it is a full blown site plan and

grant waivers to the application submission requirements. He said if the board accepts jurisdiction of the plan they can ask for more materials from the applicant during the deliberative process.

Mr. Hayden commented that there is not an option on the application for a limited agricultural site plan application; the choices are subdivision, site plan review and lot line adjustment.

Mr. Mitchell agreed and said the board has discussed in the past coming up with a minor site plan and subdivision application. He said the board can waive the regulations they deem appropriate.

Mr. Feenstra said the board's main concern was the driveway permit regarding public safety based on the farm stand.

Mr. Meserve moved and Mr. Thompson seconded the motion to accept jurisdiction of the plan. The vote was unanimous in favor of the motion (5-0).

Mr. Feenstra opened the public hearing at 7:50pm.

Bob Elliott, 12 River Road – said he is 100% behind open space and agriculture and sustainable farming and the Vernon family farm. He said it is a good thing to have in Newfields and increases the value of everyone's property and it is the right thing to do.

Greg Hasevlat, 319 Piscassic Road, wanted to express his support and said the farm plan is consistent with everything else that is going on in the town.

Alison Watts, 78 Piscassic Road, supported the proposal and said it doesn't seem like a significant risk to public safety to have the farm stand at the Vernon farm.

Andy Nichols, 327 Piscassic Road, said it appears the farm is in the same spirit Bert and Meg Anderson asked for when they had the conservation easement put on their property. The property has always been a farm and it is nice the Vernon's want to utilize it as a farm. He said he would like them to have a good shot at making it work.

Lynn Sweet, 277 Piscassic Road, said that her family knew Meg and Bert Anderson (prior owners) very well and Mrs. Anderson was in favor of farming. She grew many vegetables in her many gardens and gave a lot of the vegetables away to people in town.

Mr. Richardson said that they are not here to say the Vernon's shouldn't have a farm; it is the retail store his clients are concerned with. The Wachsmuth's are directly across the street from the property and there will be deliveries made by tractor trailers and the store will generate customer traffic and in the winter when it gets dark early, lights will shine in their home from that traffic. He said it is the opinion of his clients that it is not a farm stand; it is a retail store. It will have a meat shop and electricity. He suggested the Planning Board seek town counsel's opinion on whether this is a "farm stand" or a retail store before proceeding any further. He said that a retail use would require a variance from the ZBA.

Mr. Meserve said it is not a commercial use if they comply with the 35% product sales dollar amount requirement.

Annette Pettengill, 322 Piscassic Road, asked how this proposal is different from Windroc Winery right down the road.

Mrs. Wachsmuth said the Vernon's driveway is 45-feet away from their house and the traffic lights will go directly into their grandson's bedroom window. She said they support farms but are concerned with the retail use. She said there has got to be a way to handle the location of the driveway and public retail store that they can agree on and be able to coexist.

Ms. Manzelli said it is very common to have electricity at a farm stand to preserve produce. There is a commercial aspect to this but the law pulls out roadside stands and agriculture and treats them differently.

Mr. Feenstra asked If NH DOT looked at any other access points and Jeremiah said that they did and the proposed is the best location. He said that the site plan review is for the farm stand; he can currently still have deliveries made to his farm by tractor trailer whether he has a farm stand or not; it is listed on his driveway permit issued by the State.

Mr. Wachsmuth said the back side of the "blacksmith shop" to the road is 20-feet and doesn't meet the setback requirement for the town. RSA 674:32.c.II states that nothing in a subdivision shall be exempt from applicable building inspection requirements as well as dimensional standards and setbacks. He said it is a change of use from a "blacksmith shop", not used for decades, to a retail store. He said part of the money from the conservation easement was to reconstruct the historical buildings. The whole idea for a site plan review is for public safety.

Mr. Feenstra asked her opinion on an alternative solution.

Mrs. Wachsmuth said the driveway should be moved further down and she would like some type of buffer from the lighting. She said they would like the farm to succeed, but are concerned because the more successful they become the more business activity.

Ray Trueman, 338 Piscassic Road, asked whether or not the farm stand would have its own building number for E-911.

Ray Buxton, 12 Dixon Ave, answered from the audience and said that it would not have its own number because it is not on a separate lot, and that is regulated by the State.

Mr. Wachsmuth said that Windroc was approved under old Newfields Zoning Ordinances Section 4.18 that was taken out and no longer applies to this case.

Ms. Manzelli referred to the letter she received on April 14, 2015; it was an Administrative Decision that the farm stand would require a building permit and it was signed by Larry Shaw, Building Inspector and Michael Woodworth, Selectman. She said it is her understanding that through the building permit process the farm stand will have to meet all building codes.

Kent Lawrence, 11 Railroad Ave, said that the building is a preexisting building and was moved when reconstructed. He said the driveway has been there for many years. All of the buildings are accessed through the driveway. He has bought mushrooms from the farm and said when exiting the driveway if heading toward Epping there is a shorter site distance, and going toward town there is a longer site distance.

Mr. Meserve commented that NH DOT would not have approved a driveway permit if it did not meet the standards.

Mr. Richardson again stated that he would like the Board to seek an opinion from Town Counsel on whether the proposed use of the building is a "farm stand".

Mr. Feenstra said the Planning Board has put a lot of thought into this proposal and have not thought of it lightly.

Mr. Feenstra closed the public hearing.

Mr. Mitchell said he does not like Facebook and Facebook is not testimony before the board. He doesn't believe "liking" something on Facebook is passing judgment on it. He agrees there is no minor site plan application so the board will have to go through the regulations and grant waivers to the requirements. He said the board can also think about adding conditions of approval. He would like to see dimensions of the parking area on the plan. The board may want to add conditions for screening and fencing, and "no parking" signage on the site indicating that there is no parking along the driveway area and specific requirement for the entrance of the building.

Mr. Hayden would like to put a time frame on the construction of the drive entrance that shall adhere to the NH DOT driveway permit. Mr. Mitchell agreed with it and said that the condition could be that the drive entrance shall be constructed before operations of the farm stand begin.

The following site plan regulations were acted upon:

10.9.1 – 2 – Recordable Mylar

10.9.1.3 – Abutters listed on the plan

10.9.1.4 – Scale shown on plan

10.9.1.5 -10 – Plan specifics shown on plan for recording purposes

10.9.2 – 5 Copies of Survey Plan

10.9.3 – Topo Plan

10.9.4 – Erosion and Sediment Control Plan

10.9.5 Septic system siting (the town has a septic plan on file)

Mr. Meserve would like the plan signed by the Chair even though it is not going to be recorded.

Mr. Mitchell reversed the waiver request from 10.9.1.9 – Endorsement Block, so the Chair can sign the plan when approved even though it won't be recorded.

Mr. Hayden moved and Mr. Meserve seconded the motion to grant the waivers to the site plan regulations listed above for the site plan application before the board.

The vote was unanimous in favor of the motion (5-0).

Mr. Meserve would like the dimensions put on the plan. Mr. Hayden said he would too but a change like that would have to be reviewed and approved by the board; they would have to come back to the Board for approval.

Mr. Vernon said he is required to have an outside light at the entrance door of the farm stand.

The Board asked for the following information from Mr. Vernon:

1. Depict how the parking area will be configured on the plan
2. Depict the width of the parking aisles
3. Signage of "no parking" areas

The Board considered a condition of a 45-day time frame on completion of the driveway entrance per the approved NH DOT driveway permit. The Applicant did not object. Mr. Mitchell said that the 45-days would begin when the board approves the plan. The board agreed.

Mr. Hayden moved and Mr. Feenstra seconded the motion to continue the Vernon Farm Site Plan to the July 16, 2015 Planning Board meeting.

The vote was unanimous in favor of the motion (5-0).

The Chair called for a 5 minute recess.

The Chair reconvened the meeting.

II. New Business

James and Stephany Daley – Preliminary Discussion

Mr. Wachsmuth was reseated.

Mr. Daley explained that he would like to add two buildings to the existing "Space Station" site. He explained that his engineer put the proposed buildings at the wrong location on the plan.

Mr. Daley will apply officially for a Site Plan Review with the Planning Board for the July 16, 2015 meeting.

III. Other Business

The Court ruling on Agritourism – the court decision and the town's definition conflict. The Board discussed amending the Zoning Ordinance to follow the State Definition.

Meeting Minutes – The Board tabled the May 21, 2015 Meeting Minutes so that Mr. Wachsmuth can work with Ms. McKinnon to add information the board discussed regarding RSA 247:19 and RSA 236:13 – Access Management.

310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330

Sign Meserve/Elliott Plan – The plan was not submitted. No board action.

Mr. Mitchell will not be at the July 16th meeting and the board thought it would be a good idea to invite Attorney Ratigan to the July meeting for the Vernon Farm Application.

The meeting adjourned at 9:13pm without objection.

Respectfully submitted,

Wendy V. Chase
Recording Secretary